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Comments related to Children's Television Rulemaking

Mass Media Docket #93-48

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I am an Associate Professor in the Department of Radio-Television-Film at the University of Texas at Austin, specializing in media audiences and industries. My comments are based upon 1) my knowledge of structure of the television industry, 2) my experience as a producer of an educational children's television series, and 3) research done subsequent to the problems in syndicating my children's television series.

A copy of my research paper summarizing my experiences and observations regarding implementation of the Children's Television Act of 1990 is attached. (The paper is entitled: "Organizational Barriers to Programming by Policy: The Case of *Smart Show*.") This document contains a brief summary of my observations and a specific recommendation.

Extensive study of television stations, syndicators, and program producers indicates that the major barrier to the provision of educational and informational programming (hereinafter referred to as "target programming") for children is the lack of a distribution mechanism for that programming. Almost none of the major distributors of television programming distributes target programming for children. The small audiences garnered by most such programs present a significant economic barrier to these companies. Furthermore, almost every development executive of distribution companies interviewed displayed a profound ignorance of features required in such programming in order to attract and retain young children. (For example, most expressed the belief that any such programming must be fast-paced, with quick edits, non-traditional camera angles, and other elements that are effective for teenagers, but not for young children.) Producers of target programming are most often forced to attempt syndication of the programs on their own, a task which for which most are both untrained and not financially-equipped to perform.

On the other hand, my experience indicated that most stations were extremely eager to acquire any available target programming, as evidenced by the fact that, working alone on a part-time basis, I was able to clear the pilot test of my series on eight television stations (representing 6% national penetration, representing four different station groups (all stations were network affiliates, and at least one station was cleared in every market approached for the pilot test). In the process of contacting stations, I discovered that dozens, if not hundreds, of stations are attempting to produce their own local programming to meet the goals of the act.

The other major observation is that there are dozens of programs developed every year by independent producers, but those programs never reach an audience because of the lack of interest on the part of distribution companies in syndicating target programming. In short, the programs exist and the market among stations exists, but no distribution mechanism exists.

I strongly recommend that any new rules relating to the provision of target programming include consideration of the distribution of such programs by 1) giving stations credit for engaging in the production of programs for distribution, 2) mandating that no station may obtain more than 10 hours a week of programming from any distributor unless that distributor also provides an educational or informational program for children, or 3) providing special funding (or other compensation, including tax breaks) to subsidize the distribution of target programming.

Finally, I have a specific set of rules to recommend. Although I am philosophically opposed to any quantitative requirement, if one is made it should take the following form:

Each station is required to earn six points of children's credit per week. The point scale follows:

1.	Airing 1/2 of **labeled** educational or informational programming	1 point
2.	Airing interstitial educ. or infor. spots in children's programming	.2 pts/spot
3.	Advertisement of educ. or infor. programming in other media	1 point
4.	Outreach efforts (telethons, job fairs, "weather school", etc.)	1 point
5.	Funding program for other station in market	1 pt/pgm
6.	Bonus points: Locally produced target programming	1 point
7.	Bonus points: Station distributes target programming	.2 pts/sta.
8.	Ratings bonus: Exceed station average for adjacent time slots	1 point

The point system would be subject to the following rules:

1. Stations need not report all points earned, they are only required to earn the minimum number of points.
2. Stations must exceed minimum in three out of four weeks (providing latitude for pre-emption of programming by bonafide news events).
3. Bonus points are added on top of regular points, i.e., a station airing a locally-produced 1/2 hour program would earn 2 points).
4. The total point credit for interstitial spots cannot exceed 1/2 of the requirement.

Possible considerations relating to this system are the total number of points to require, whether the points should be accrued on a weekly or monthly basis, the number of points to assign for each activity, other possible methods of earning points, and whether stations should be allowed to "bank" (or sell) excess points.

ORGANIZATIONAL BARRIERS TO PROGRAMMING BY POLICY: "SMART SHOW!" AND THE CHILDREN'S TELEVISION ACT OF 1990

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In 1990, the U.S. Congress passed the Children's Television Act of 1990, requiring all television stations in this country to regularly air educational and information programming for children. The act was hailed as a milestone by interest groups because it tied renewal of a television station's license to compliance with the statute.

Almost five years later, children's programming was much the same as it was before Congress passed the Act. Rather than inspiring a renaissance of educational programs for children, the Act has led to minimal changes in the programming landscape. The purpose of this paper is to examine the structure of the domestic television industry to identify barriers which are impeding compliance with the Act. This paper is informed by analysis of articles in trade publications, relevant theory, and the experience of the author as creator and producer of "Smart Show!," a half-hour program specifically designed to help stations meet the requirements of the Act.

The paper will briefly review the Act and the subsequent interpretations by the Federal Communications Commission (FCC), then will describe the history of "Smart Show!" Finally, the paper will discuss the organizational structure of the television industry and identify specific barriers which must be overcome if the spirit of the 1990 Act is to be carried out by television broadcasters.

The Children's Television Act of 1990

In October 1990, Congress passed the Children's Television Act of 1990. President Bush, objecting to content-related portions of the law he felt were unconstitutional, allowed the bill be become law without his signature. The Act contained four major provisions: It set limits on the number of minutes of commercials allowed during children's television programs, prohibited "program-length" commercials, established funding for children's programming on public television stations, and mandated that the FCC consider a station's children's programming efforts as a factor in the renewal of a television broadcast license.

Specifically, the Act stated that all television stations must serve "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." (Sec. 103) Under the Act, these efforts include the licensee's programming, non-broadcast efforts to enhance the educational and informational value of the programming, and efforts to produce or support such programming by another station in the market.

In April 1990, the FCC concluded the initial rulemaking process by issuing specific guidelines for stations to follow in meeting the requirements of the Act. In its clarification, the FCC defined the children's programming referred to in the license renewal portion of the Act as those programs "broadcast primarily for an audience of children 16 years of age and under," but it did not require a station to serve <u>all</u> children in the under-16 range. The FCC then went on to define "educational and informational" programming as "programming that furthers the positive development of the child in any respect, including the child's cognitive/intellectual or emotional/social needs," but it specifically set no minimum amount of programming to be aired (Federal Communications Commission, 1991).

The FCC's rules then went on to list examples of existing programming that met the requirements of the Act (parenthetical remarks were included in the text of the Act):

These include "Fat Albert and the Cosby Kids" (dealing with issues important to kids, with interruptions by host reinforcing purpose of show), "CBS Schoolbreak Specials" (original contemporary drama educating children about the conflicts and dilemmas they confront), "Winnie the Pooh and Friends" (show based on books designed to encourage reading), "ABC Afterschool Specials" (everyday problems of youth), "Saved by the Bell" (topical problems and conflicts faced by teens), "Life Goes On" (problems of a retarded child, emphasizing pro-social values), "The Smurfs" (prosocial behavior), "Great Intergalactic Scientific Game Show" (basic scientific concepts), and

"Action News for Kids" (weekly news program for and by kids). (Federal Communications Commission, 1991, Par. 19)

Because the Act lacked any specific numerical requirement for programming and an indication of the percentage of a program that must be "educational or informational," it was subject to a broad set of interpretations. In a "Counsel Memo" to its member stations distributed at its annual convention in 1992, the National Association of Broadcasters (NAB) indicated that the FCC "purposefully extended to broadcasters broad flexibility and discretion in meeting the new programming standard...." The NAB report did not recommend a specific amount, but indicated that many attorneys will counsel their clients to air, at minimum, one weekly half-hour educational and informational program for children.

The latitude of interpretation of the Act was illustrated in October 1992 when the Center for Media Education released an audit of the efforts documented by 50 television stations in meeting the requirements of the Act. According to the report, stations were claiming credit for "educational and informational" programming such as "G.I. Joe," "Leave it to Beaver," and "The Jetsons." The report resulted in outrage among advocates of children's television programming and focused attention upon station compliance with the Act (Flint, 1992).

Three significant developments have occurred since the beginning of 1993. In January, the FCC held up the license renewal for seven television stations for not presenting documentation that they had met the programming requirements of the Act. In March, the FCC questioned the use of cartoons to meet the requirements of the Act and launched an inquiry to establish more specific guidelines. On March 10, the House Telecommunications Subcommittee held the first of two hearings into station compliance with the Act, hearing from two broadcasters, two children's advocates, and one producer.

"Smart Show!"

In July 1991, while studying the Act and the FCC's interpretation, I observed that many of the existing programs that were primarily educational (e.g. "Way Cool") earned low ratings, while programs that were primarily entertaining (e.g. "Teenage Mutant Ninja Turtles") earned high ratings but had minimum educational value. Rejecting the idea that ratings and educational value were inversely related, I set out to design a program which would do both.

The program was "Smart Show!" (known at first as "Smart Kids"). It consisted of home videos done by children and teens, introduced by two teenagers. The twist on the home video theme was that each video had to be both informational and entertaining, allowing the program to meet the goals of the Act. The home video program was chosen because of the ability of home videos to enhance specific relations that children have with television: self-understanding (learning more about who they are and why they do the things they do) and interaction orientation (getting cues on how to act and interact with others) (Ball-Rokeach, 1988). After considering a number of ways to tie the home videos together, the teenage hosts were chosen to maximize the relationship of the audience to the program, providing a degree of continuity.

Examples of home videos received include a rap song that teaches long division, a ride with a police officer, a demonstration of how to open a checking account, and a set of sports videos (how to play soccer, how to swing a bat, how to be a cocky athlete, etc.). Each program originated from a "smart" location (e.g., a library, a doctor's office, or a computer center), allowing the hosts to share additional information on the location that helped to tie the videos together.

Although area broadcasters showed strong interest in the concept, initial discussions with producers indicated that it would be extremely difficult to sell the project to a national production company. Believing that demand among broadcasters would be strong enough to warrant production of the program, I decided to attempt to syndicate the program myself. Local contests yielded enough informational clips for production of a pilot episode, and two local teenagers were hired to host the program.

The pilot was introduced to broadcasters at the NAB National Convention in April 1992. The program was offered on a cash basis, with the cost per market determined by the approximate price of two commercial avails in the program. Ultimately, over 100 tapes and information packages were distributed to television stations and rep firms, but, after three months, not a single contract had been signed.

Discussions with stations indicated five problems with the program. The most important of these was the fact that the program was offered on a "cash" basis, with stations paying a weekly fee for the right to air the program. Program directors and station managers uniformly indicated that almost all of their weekly programming was obtained on a barter basis, with the station giving up a set amount of advertising time in the program in exchange for the right to broadcast the program. Many indicated that they had no budget at all for children's programming, indicating that they could get all of the children's programming they needed through barter. (One other difference: The cash deal would have required only 20 percent national coverage to break even, while a barter deal typically requires 70 percent national coverage.)

The other problems identified related to weaknesses in the production (including a slow pace and emphasis on education rather than entertainment), the late introduction (many stations had already made their programming commitments for the fall), uncertainty about whether enough clips could be obtained to sustain a weekly series, and concern about the producer's lack of experience.

Rather than abandon "Smart Show!," a decision was made to rework the program, answering as many of the above concerns as possible. The new plan required production of three episodes, with this "pilot series" being aired during Fall 1992 in enough markets to prove the viability of the program, which would then be introduced nationally in September 1993. A new pilot episode was produced in August, with a faster pace (13 clips vs. 10 clips in the first pilot), more interaction among the hosts, and more humor. KXAN, the LIN station in Austin, agreed to provide the field production services and a portion of the editing services in return for the rights to air the three-episode pilot series on four LIN stations (network affiliates in Dallas, Indianapolis, Austin, and Decatur, Illinois). Other stations were offered the pilot series on a barter basis, with each station providing some type of production service in exchange for the broadcast rights. Ultimately, eight stations (all of them network affiliates) participated in the pilot test, including stations in two of the top 10 markets (Dallas and Houston), the five largest television markets in Texas, and four metered markets. The program earned surprising ratings in the three metered markets in which it was aired during a Saturday morning time period, finishing first among children's programs in its time period over half the time.

At this point, it should be noted that all costs related to the program (except the production services noted above) were funded by the author. Although strong belief in the program justified the expenditure of our life's savings, a continuing question was how deeply to go into debt to finance continued production and the process of wooing a distributor.

Regarding distribution, two facts were obvious: The program would have to be offered on a barter basis, and an established national syndication firm would have to be engaged in order to clear the number of stations needed in order to reach the 70 percent coverage required by most barter advertisers. The ratings earned in the pilot test allowed revenue projections from barter syndication to be made. With a production cost of $15,000 per episode, a national rating of only 1.0 was needed in order for the program to return its production and distribution costs. With ratings in the pilot test averaging about 1.5, indications were that the program would easily make back the cost of production and distribution.

During Fall 1992, discussions were held with over a dozen distributors regarding the program. The largest distributors generally refused to consider the program, indicating that a half-hour weekly series for children would not generate enough revenue to justify their involvement. Other distributors were concerned about the quality of the production and the fact that the program was educational--they didn't believe that stations would buy it. The smaller distributors showed the greatest interest, but generally indicated that they had other programs in development which had a higher priority. Finally, in December, Network Ventures Inc. (NVI) agreed to distribute the program and sell the advertising time available in the program.

Although NVI was sold on the potential of the program, they were not satisfied with the quality of the production and requested that they be allowed to produce a "presentation reel" to show to prospective stations rather than any of the three existing episodes. NVI was encouraged to talk with programmers at the stations which had participated in the pilot test, most of whom indicated that they wanted to carry the program when the weekly broadcasts began. However, NVI personnel insisted that the program needed a major overhaul before it could be introduced to the market, minimizing the informational content and adding entertaining segments such as "Joke of the Week."

Realizing the importance of the NATPE convention for introducing new programming, I encouraged NVI to publicize the availability of the program at the January 1993 NATPE convention. However, NVI chose not to screen the program or attempt to sign any stations to air the program at the convention. After the convention, two different dates were set for producing the presentation reel, but both were canceled by NVI. As of early March, NVI had not met with a single station, in spite of the fact that they were provided with names of stations who were ready to commit to the program. Finally, NVI informed me that they had too many projects in the works to devote the time needed to distribute "Smart Show!" As of this writing, "Smart Show!" does not have a distributor, although potential distributors have been approached with the concept.

Analysis: The Television Program Marketplace and the Children's Television Act of 1990

The above narrative is an attempt to provide an objective description of some of the barriers encountered in getting "Smart Show!" on the air. Based upon the lack of interest in the program by distributors, it can be argued that the problem was not in the system but in the program. Recognizing that every program is subject to such a subjective evaluation, the remainder of this paper asserts that the problem is not with the program but with the distribution system. The acceptance of the program by the television stations participating in the pilot test and the resulting ratings from the metered markets indicate the strength of the program. Perhaps more important however, is the number of similar programs discovered during the abortive attempt to distribute the program.

One of the most interesting lessons of producing and distributing "Smart Show!" was the number of available programs designed to achieve the same goals. I first learned of these programs when I purchased exhibit space at the 1992 NAB convention in Las Vegas. The small number of broadcasters visiting our "booth" was exceeded by the number of producers who were looking for a distributor for a project they were working on. Some were only in idea form, but others had run on stations in a test similar to the one described above for "Smart Show!" Then, when speaking with television stations, I found out that many of these stations in the top-50 markets were producing an informational children's program on a local level and were themselves trying to find a national distributor, without success.

The remainder of this paper is devoted to providing an analysis of the specific organizational barriers which inhibit the full implementation of the Act. These barriers include reluctance on the part of distributors to syndicate educational programs for children, the economic basis of the commercial television industry, and the Act itself, which provided money for development of programming for non-commercial and public stations but not for commercial stations.

To understand the first barrier, it is necessary to examine the structure of the commercial television industry. Television stations have three sources of programming to meet the requirements of the Act: local production, networks, and syndication. Because the children make up a small fraction of the total audience, the economics of producing local children's programming limit such production to the largest markets only. To date, the networks have played a minimal role in providing programming to their affiliate to meet the requirements of the Act. Essentially, the majority of stations which can neither afford to produce a local program nor count on their affiliated network to provide such programming are forced to turn to the distributors of syndicated programs.

As indicated earlier, most children's programming is provided on a barter basis. Figure 1 provides an illustration of the system, in which a producer must work through a distributor in order to sign up enough television stations to attract advertisers to the program and sell the advertising time that pays the cost of producing and distributing the program. While a "hit" program earning comparatively high ratings can provide large profits for both the producer and distributor, a program that fails can end up costing both the producer and distributor a considerable sum. Furthermore, there is a much larger supply of programs than distributors, allowing distributors to be selective about the programs they choose to market. Finally, while anyone can attempt to distribute a program independently, the "Smart Show!" experience indicated that the most important part of selling a program to a station is developing a relationship with the station personnel. Because there are over 1100 commercial television stations in the U.S., it is all but impossible to develop the relationships needed without a considerable expense in both sales and support staff.

Given the importance of the distributor in the system, their attitudes and motivations must now be considered. Unlike broadcasters, distributors have no requirement to provide educational programming for children. Their motive is typically the maximization of profit. The "Smart Show!" experience demonstrates the limitations this profit motive places upon the availability of educational programming. The most common response to the program by distributors was that the program was "too educational--children won't watch it." Those who were intrigued with the concept suggested that the informational aspect be downplayed in favor of practical jokes, "mini-movies," and other, more entertaining formats. The larger companies indicated that they were uninterested in any weekly series, indicating that the same effort used to sell a weekly program could be used to sell a "strip," providing up to five times the revenue from the same amount of sales effort. In general, most distributors were not familiar with the requirements of the Act. Those who were indicated that other existing products would fill the stations' needs.

Furthermore, broadcasters have little control over the types of programming provided by distributors. Although many distributors have put together station groups over the past few years (e.g., Paramount, Fox, and Tribune), few distribution firms are owned and operated by broadcasters.

Classic "power-dependency" theory suggests that the power relationships between syndicators and stations is a function of 1) the degree to which each actor relies upon the other for a scarce resource, and 2) the availability of that resource from an alternate supplier (Emerson, 1962). The power of stations to force distributors to provide programming is therefore a function of the scarce resource provided by the stations--outlets for programming--and the number of alternatives. Since each distributor has over 1100 hundred possible outlets for a program, the power of any given station is relatively small. The stations in larger markets do have greater influence (proportional to their market size), but these stations are the ones most able to produce local programming for children. Hence, the smaller stations (both in terms of market size and revenue) which cannot afford to produce local children's programming are also the ones which are least likely to influence a distributor to provide such a program.

The distributor dilemma is illustrated by two other examples. During 1992-1993, Turner Broadcasting has syndicated "Real News for Kids" on a barter basis. However, when the distributor was unable to cover the production cost of the program (reportedly $35,000 per week) with advertising revenues, they declined to renew the program on a barter basis. Instead, stations had to purchase the rights to the program for cash. The new arrangement, combined with revenues from airing the program on CNN, kept "Real News for Kids" on the air for another year, but it has since been canceled.

The second example is "Beakman's World," initially distributed by Columbia Pictures Television. This weekly, science series was provided on a barter basis for its first year, but the combination of ratings success and high production costs led Columbia to license the program to the CBS network as part of its Saturday morning lineup. Although the move benefited network affiliates which did not previously carry the program, those stations which had been carrying the program and were not affiliated with CBS were forced to look elsewhere for a replacement program.

(As a barter product, "Beakman's World" represents another problem with the Act. Because the production cost of the program was so high, estimated at between $100,000 and $200,000 per episode, the distributor held back three-and-a-half minutes of commercial time for itself. Although the program was formatted for six-and-a-half minutes of commercials, compliance with the commercial limits of the Act required that stations air an average of only five-and-a-quarter minutes of commercials per half-hour if the program was targeted at children twelve and younger and aired on a weekend. Stations had a choice: stating that the program was targeted at teenagers and selling three minutes of advertising in the program, or limiting themselves to two minutes or less of commercial time in the program.)

The "Smart Show!" experience and the above examples illustrate the limitations faced by local television stations in fulfilling the requirements of the Children's Television Act of 1990. Before possible solutions to this dilemma are offered, one other section of the Act must be discussed.

The last section of the Children's Television Act of 1990 provided funding for a "National Endowment for Children's Educational Television." This endowment provided a total of $6 million to producers of educational and informational programming for children during 1991 and 1992. However, these programs could be aired only on public or non-commercial stations for the first two years after they were produced. After that, these programs could be provided to commercial broadcast stations, provided that the programs are aired without commercial interruptions.

One key to understanding the dilemma faced by broadcasters is introduced by this last requirement. The airing of programs without commercial interruption indicates that such children's programming must necessarily be subsidized by other programming on the station. Accepting the concept of such subsidies provides a number of possible solutions ranging from producing local programs that won't recover the cost of production to cash payment for children's television programming.

There are two problems with this scenario. First, the competitive environment for commercial broadcasting in the United States has led to a system in which stations expect their programming efforts to be supported by advertiser demand. If a program does not receive advertiser support, it is canceled and replaced with one which will. Any change in this system represents a fundamental change in the motivations and business practices of broadcast stations, a change which is certainly more difficult than trying to accommodate the Act under the current system.

Second, the philosophy of supporting all programming with advertising revenues has the potential for a much greater impact upon children than a subsidized system. The basis of the advertiser-supported system is maximizing the size of the target audience. If advertising support is not a factor, lower-quality programs that earn smaller audiences might be aired, and programs might be aired at times when small numbers of children are available to view them. In short, the best way to ensure that the information in the programs reaches the children to whom they are targeted, accomplishing the overriding goal of the Act, is to ensure that such programming efforts are supported by advertising revenue.

The most practical solution to the distributor dilemma is for broadcasters to work together to educate syndicators about the revenue potential available from children's educational programming. Such an effort would be an uphill battle, but it could be aided by ratings success for one or more qualifying programs. Another solution would be for broadcasters to form a programming "clearinghouse" (perhaps through the NAB), where stations producing their own, local, children's programs could share them with other stations around the country.

Two other solutions are possible, although much less likely. Congress could change the 1990 Act to either make compliance easier for broadcasters or to require all distributors to make educational programming available. (The latter solution could only be done indirectly, for example, limiting television stations to purchasing programs only from distributors which provide educational programming for children.)

In conclusion, two organizational barriers are preventing broadcaster compliance with the Children's Television Act of 1990. The fact that almost all distributors have little motivation to provide programming to broadcasters ensures that few such programs will be produced and distributed on a national basis. Further, the nature of commercial television broadcasting as an advertiser-supported medium provides a systemic inhibition against the airing of programs which are not supported by advertising revenue.

The example of "Smart Show!" is not unique. Quality educational and informational programming for children is available today, and even more could by provided if the distribution bottleneck could be broken. It is hoped that this paper will be a first step towards breaking that bottleneck and providing local television stations with the programs they need to fulfill the letter and spirit of the Children's Television Act of 1990.

The barriers discussed above are not exclusive to children's programming. The process of requiring any broadcaster to include a specific type of programming in their schedule should consider the same barriers. These barriers can be overcome, but the complexity of the system that provides high-quality (i.e., expensive) programming in the system of local broadcasting is a major factor in determining both the ability and speed of broadcasters to comply with any such mandate.

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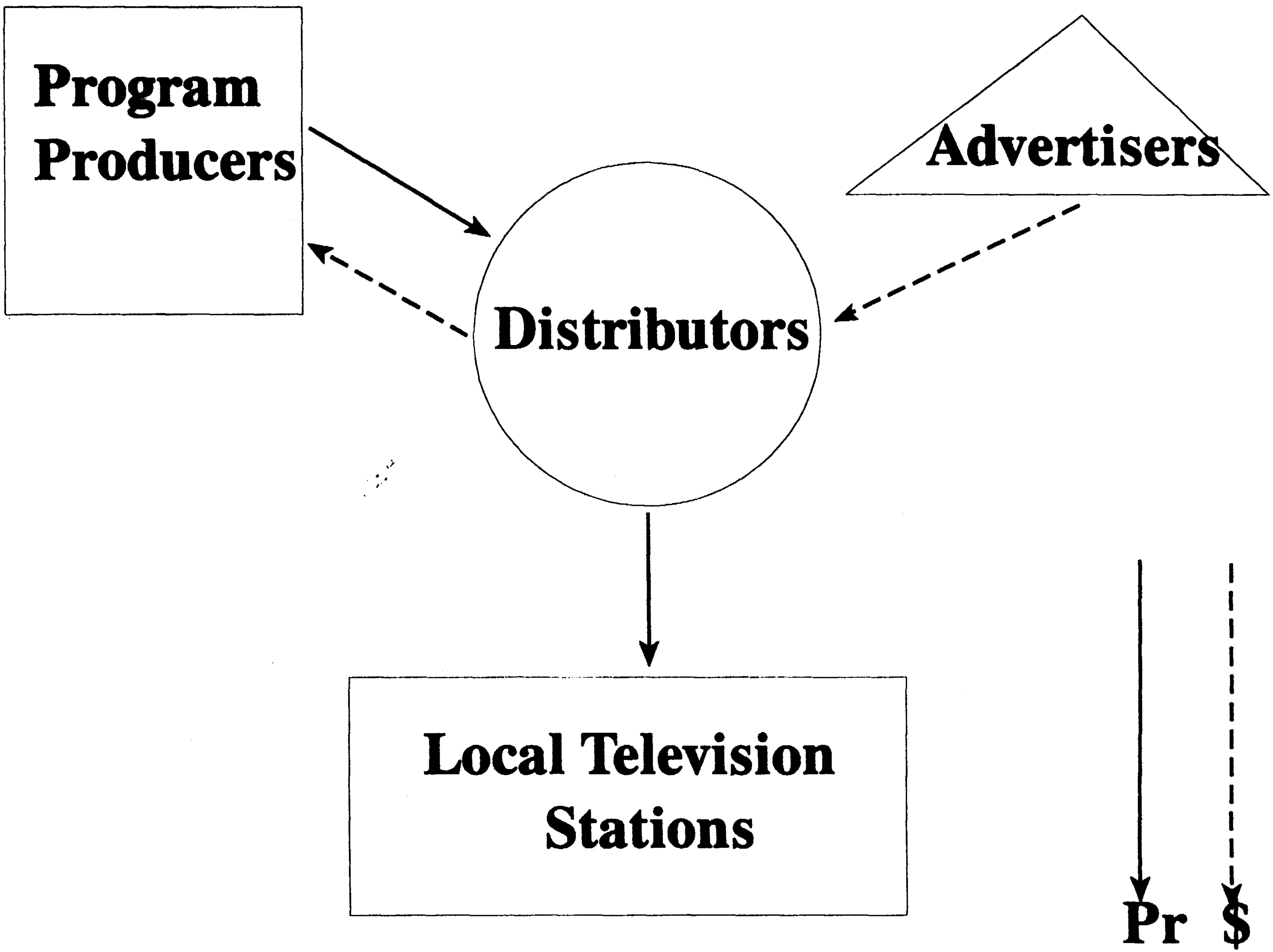

Figure 1--Structure of the Broadcast Television Syndication System